

REMARKS

Reconsideration of the present application is respectfully requested. Claims 2-4 and 27 were previously canceled. In this response, claims 11, 12, 20 and 21 have been canceled; claims 7, 8, 13, 14 and 19 have been amended; and claims 31-37 are new. No new matter has been added.

Status of Claims

Claims 1, 5, 6, 9, 10 and 23-30 stand rejected under 35 U.S.C. § 103(a) based on Ellipsus White Paper -- InfiniteMAP™ ("Ellipsus") in view of U.S. Patent no. 6,721,554 of Gnesda et al. ("Gnesda"). Claims 7, 8, 11-13 and 20-22 stand rejected under 35 U.S.C. § 103(a) based on Ellipsus in view of Gnesda and further in view of U.S. Patent Application Publication no. 2001/0037192 of Shimamoto et al.

Response to Rejections

Applicants respectfully submit that the rejections are in error. The burden of establishing a *prima facie* case of obviousness is on the *Examiner*. *In re Fine*, 5 USPQ.2d 1596 (Fed. Cir. 1988). To establish a *prima facie* case of obviousness, among other things, the cited prior art reference or references must teach or suggest *all of the claim limitations*. *In re Vaeck*, 947 F.2d 488, 20 USPQ.2d 1438 (Fed. Cir. 1991); MPEP § 706.02(j). Further, the question under 35 U.S.C. § 103 is *not* whether the *differences* between the claimed invention and the prior art would have been obvious, but whether the claimed subject matter as a *whole* would be obvious. 35 U.S.C. § 103(a); *Stratoflex, Inc. v. Aeroquip Corp.*, 713 F.2d 1530, 1537 (Fed. Cir. 1983).

In the present application, the cited art does not disclose or even suggest defining a data entity which has the characteristics of the “domains” recited in the claims, or the claimed invention as a whole. In particular, neither Ellipsus nor Gnesda discloses or suggests, per claim 1 (*inter alia*):

storing domain data defining a plurality of domains, each domain representing a different subset of a plurality of wireless services subscribers, *each said subset of the plurality of wireless services subscribers including more than one wireless services subscriber, each of the domains further representing a billing relationship between a business entity and the corresponding subset of the plurality of wireless services subscribers, and the plurality of domains further representing a partitioning of content designed for use in wireless communication devices for purposes of making the content available to the wireless services subscribers* (emphasis added).

The Examiner admits that “Ellipsus does not explicitly teach a *plurality* of domains, *each* domain representing a different subset of a plurality of wireless services subscribers, *each* subset including more than one wireless services subscriber, *each* domain representing a billing relationship and the plurality of domains representing a partitioning of content” Office Action, p. 3 (emphasis original). However, the Examiner cites Gnesda in regard to at least some of these limitations. Office Action, p. 4.

Applicants respectfully disagree with the Examiner’s analysis, for several reasons. First, assuming *arguendo* that Gnesda discloses domains, where each domain represents a different subset of a plurality of wireless services subscribers and a billing relationship between a business entity and the corresponding subset, Gnesda still fails to disclose or suggest that the domains further represent a *partitioning of content* for purposes of making the content available to the wireless services subscribers. An example of partitioning of content is that each subscriber belongs to

only one domain and is able to view and obtain only those digital products that are associated with his domain (per Applicants' specification, paragraph [0036]). Note, however, that this particular *example* of content partitioning is *not* being relied upon by Applicants' to distinguish claim 1 from the cited art; rather, the limitation that the plurality of domains, along with their other recited attributes, represent a partitioning of content for purposes of making the content available to the wireless services subscribers distinguishes claim 1 from the prior art (among other claim limitations). For at least this reason, therefore, the rejection is improper and should be withdrawn.

Second, the Examiner goes on to state that "the terminology used in the claims for this data, 'domain(s)' does not change that the data and its relationship to within itself is well known in the art as is the data is used." Office Action, p. 4. That statement is not entirely clear, particularly the phrase "the data and its relationship to within itself." However, Applicants' best understanding of that statement is that the Examiner essentially believes that the difference between the above-mentioned claim limitations and Gnesda is merely one of terminology. Applicants respectfully disagree, for at least the reason mentioned in the preceding paragraph.

Regarding the limitation, "each subset including more than one wireless services subscriber," the Examiner states (Office Action, p. 4) that "the concept of scaling the number of wireless services subscribers in a given subset, e.g. the plurality of wireless services subscribers, is well-known in the art and as legal precedent" (citing MPEP 2144.04 (IV), which cites *In re Rinehart*, 531 F.2d 1048, 1053, 189 USPQ 143, 148 (CCPA 1976) ("mere scaling up of a prior art process capable of being scaled up, if such were the case, would not establish patentability in a claim to an old process so

scaled."). Applicants respectfully submit that the Examiner's reliance here upon what is allegedly "well known in the art" and "legal precedent" is misplaced. The present invention, and the specific limitations which Applicants have argued, do not involve or reduce to the *mere scaling* of the number of wireless services subscribers in a given subset. Applicants submit that the Examiner is improperly addressing individual claim limitations in isolation while ignoring their overall collective meaning and significance, i.e., the claimed invention as a *whole*. Again, the question under 35 U.S.C. § 103 is *not* whether the *differences* between the invention and the prior art would have been obvious, but whether the claimed subject matter as a *whole* would be obvious. 35 U.S.C. § 103(a); *Stratoflex*, 713 F.2d at 1537.

Thus, in assessing obviousness, at least the following limitations must be considered *in aggregate*, not merely on a piecemeal basis, *after* showing that they were known in the prior art:

storing data defining a plurality of domains, each domain representing a different subset of a plurality of wireless services subscribers, *each said subset of the plurality of wireless services subscribers including more than one wireless services subscriber, each of the domains further representing a billing relationship between a business entity and the corresponding subset of the plurality of wireless services subscribers, and the plurality of domains further representing a partitioning of content designed for use in wireless communication devices for purposes of making the content available to the wireless services subscribers.*

Applicants respectfully submit, however, that the prior art provides no disclosure or motivation to define multiple domains with these characteristics.

Furthermore, an obviousness rejection cannot be supported by a bare allegation of what is "well known in the art". "It is never appropriate to rely solely on 'common

'knowledge' in the art without evidentiary support in the record, as the principal evidence upon which a rejection was based." *In re Zurko*, 258 F.3d 1379, 1385, 59 USPQ2d 1693, 1697 (Fed. Cir. 2001); MPEP 2144.03(C). If the Examiner intends to maintain this contention, the Examiner should *cite a reference* to show that the facts alleged to be well known are in fact well known, as required by MPEP 2144.03(C).

Applicants respectfully submit that neither Ellipsus nor Gnesda discloses, suggests, or supplies any motivation to provide, *inter alia*:

storing domain data defining a plurality of domains, each domain representing a different subset of a plurality of wireless services subscribers, *each said subset of the plurality of wireless services subscribers including more than one wireless services subscriber, each of the domains further representing a billing relationship between a business entity and the corresponding subset of the plurality of wireless services subscribers, and the plurality of domains further representing a partitioning of content designed for use in wireless communication devices for purposes of making the content available to the wireless services subscribers* (emphasis added).

These shortcomings in the disclosures of Ellipsus and Gnesda are not remedied by any other source, including what is allegedly "well known in the art", legal precedent, etc. Consequently, claim 1 and all claims which depend on it are believed to be patentable over the cited art.

Each of the other pending independent claims includes the same limitations as, or limitations similar to, those discussed above. Therefore, all of the other independent claims and all claims which depend on them are also patentable for essentially the same reasons as discussed above.

Claim 14

Claim 14 as amended recites:

14. (Currently amended) A method comprising:

maintaining, in a server system, data defining a plurality of domains, each domain representing a different subset of a plurality of wireless services subscribers, each said subset including more than one wireless services subscriber, each of the domains representing a billing relationship between a business entity and the corresponding subset of a plurality of wireless services subscribers, **including specifying for each of the domains a language for purposes of allowing wireless services subscribers to identify and obtain digital content, the digital content including a plurality of digital products, where the language for each domain can be set independently of the language of every other domain, and further including specifying for each of the domains a currency in which content is to be expressed to wireless subscribers for purposes of wireless services subscribers obtaining digital content, where the currency for each domain can be set independently of the currency of every other domain;**

enabling a plurality of digital product providers to publish the digital products on the server system;

enabling each of the subscribers to view descriptions of at least some of the digital products and to request the digital products from the server system, **such that each of the subscribers is able to view descriptions of digital products for a domain with which the subscriber is associated but is not able to view descriptions of digital products of any domain with which the subscriber is not associated;** and

provisioning the requested digital products in wireless communications devices of the subscribers via at least one wireless network. (Emphasis added.)

The cited art neither discloses nor suggest such a method, particularly the limitations emphasized above in bold. The arguments presented above regarding claim 1 also apply to claim 14. In addition:

1) Language

The cited art fails to disclose or suggest, per claim 14, specifying for each domain a language for purposes of allowing wireless services subscribers to identify

and obtain digital content, *where the language for each domain can be set independently of the language of every other domain*. The Examiner admits that Ellipsus/Gnesda fails to disclose these limitations. However, the Examiner contends that “Shimamoto teaches that language is one factor to be considered when determining/publishing data to wireless subscribers,” (rejection of claims 8 and 21; Office Action p. 11) and that the claimed invention would therefore be obvious.

Even if the Examiner’s characterization of Shimamoto is assumed to be correct (*arguendo*) in this regard, the Examiner has not established a *prima facie* case of obviousness regarding claims 8 and 21 (canceled) or claim 14 as amended. To establish a *prima facie* case of obviousness, the cited prior art reference or references must teach or suggest *all of the claim limitations*. *In re Vaeck*, 947 F.2d 488, 20 USPQ.2d 1438 (Fed. Cir. 1991); MPEP § 706.02(j). The Examiner’s very general characterization of Shimamoto (as quoted in the preceding paragraph) clearly does not map to or even remotely suggest the specific limitations that are admitted to be missing from Ellipsus/Gnesda, i.e., specifying, for *each* of a plurality of domains, a language for purposes of allowing wireless services subscribers to identify and obtain digital content, *where the language for each domain can be set independently of the language of every other domain*. In fact, Shimamoto has little if any relevance to the this claim limitation, other than perhaps the fact that Shimamoto uses the word “language”.

Shimamoto discloses a technique to select a GUI user’s preferred language automatically. The ability to automatically select a user’s language, however, does equate to or even remotely suggest specifying, for *each* of a plurality of domains, a language for purposes of allowing wireless services subscribers to identify and obtain

digital content, *where the language for each domain can be set independently of the language of every other domain.*

Furthermore, the Examiner's characterization of Shimamoto is *not accurate*.

Shimamoto does *not* teach that language is a factor to be considered when determining/publishing data to *wireless subscribers*. According to Applicants' reading, Shimamoto does *not* relate to or even mention *wireless services* or *wireless subscribers*. Therefore, the premise upon which the conclusion of obviousness is based is also erroneous.

For at least these reasons, therefore, claim 14 and all claims which depend on it are patentable over the cited art.

2) Currency

The cited art also fails to disclose or suggest, per claim 14, specifying for each domain, a currency in which content is to be expressed to wireless subscribers for purposes of wireless services subscribers obtaining digital content, *where the currency for each domain can be set independently of the currency of every other domain*. The Examiner admits that Ellipsus/Gnesda fails to disclose these limitations. However, the Examiner contends that "Shimamoto teaches that, in addition to language, pricing should be taken into consideration" (rejection of claims 7 and 20; Office Action p. 11) and that the claimed invention would therefore be obvious.

Again, even if the Examiner's characterization of Shimamoto is assumed to be correct (*arguendo*), the Examiner has not established a *prima facie* case of obviousness regarding claims 7 and 20 (canceled) or claim 14 as amended. To establish a *prima*

facie case of obviousness, the cited prior art reference or references must teach or suggest *all of the claim limitations*. *Id.* The Examiner's grossly general characterization of Shimamoto (i.e., "that pricing should be taken into consideration") clearly does not even come close to suggesting the specific limitations that are admitted to be missing from Ellipsus/Gnesda, i.e., specifying for *each* domain, a currency in which content is to be expressed to wireless subscribers for purposes of wireless services subscribers obtaining digital content, *where the currency for each domain can be set independently of the currency of every other domain*. In fact, Shimamoto does not disclose or suggest any such limitation. Here again, Shimamoto has little if any relevance to this claim limitation.

For this addition reason, therefore, claim 14 and all claims which depend on it are patentable over the cited art.

3) Limiting subscriber' ability to view products

In addition, the cited art also does not disclose or suggest, per claim 14, that *each of the subscribers is able to view descriptions of digital products for a domain with which the subscriber is associated but is not able to view descriptions of digital products of any domain with which the subscriber is not associated*. This limitation is supported in Applicants' specification at, *inter alia*, the last sentence of paragraph [0036]. For this additional reason, therefore, claim 14 and all claims which depend on it are patentable over the cited art.

Dependent Claims

In view of the above remarks, a specific discussion of the dependent claims is considered to be unnecessary. Therefore, Applicants' silence regarding any dependent claim is not to be interpreted as agreement with, or acquiescence to, the rejection of such claim or as waiving any argument regarding that claim.

Conclusion

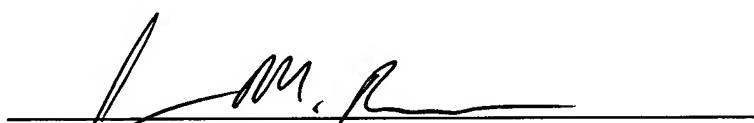
For the foregoing reasons, the present application is believed to be in condition for allowance, and such action is earnestly requested.

If there are any additional charges, please charge Deposit Account No. 02-2666.

Respectfully submitted,

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